

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

SHERRY WHEELER and MARK)	
WHEELER)	
)	
Plaintiffs,)	CASE NO.: 1:20-cv-00124
)	
v.)	
)	
ROBERT IOVANNE and USA TRUCK,)	
INC.)	
)	
Defendants.)	

NOTICE OF REMOVAL

TO THE HONORABLE JUDGES AND CLERK OF THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF INDIANA.

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1332, 1441, and 1446, Defendants, ROBERT IOVANNE and USA TRUCK, INC., by counsel, (collectively, “Defendants”), by counsel, hereby file this Notice of Removal to remove the above-entitled action to this Court based upon the following supporting grounds. Defendants, appearing solely for the purpose of this removal, and for no other purpose, and preserving all other defenses available to them, state as follows:

VENUE

1. On or about October 17, 2019 the above-entitled action was commenced against Defendants in the Allen Superior Court 1 of the State of Indiana, Cause No: 02D01-1910-CT-000555, and is now pending therein.

2. Removal to the Northern District of Indiana, Fort Wayne Division, is appropriate pursuant to 28 U.S.C. § 1441(a), because the Northern District of Indiana, Fort Wayne Division,

embraces the County of Allen, where the action was pending prior to the filing of this Notice of Removal.

REMOVAL IS TIMELY

3. On or about October 23, 2019 Defendant USA TRUCK, INC. was served by certified mail with a Summons and Complaint for Damages in the above-entitled action via its registered agent, CT Corporation System in Indianapolis, Indiana.

4. The case stated by the initial pleading was not removable solely because there was not complete diversity amongst the parties pursuant to section 28 U.S.C. §§ 1332(a).

5. Plaintiffs served their discovery responses on Defendants on February 28, 2020, which outlined that Plaintiffs' special damages exceed \$101,000.

6. On March 3, 2020, the Allen Superior Court 1, dismissed United Farm Family Mutual Insurance Company d/b/a Indiana Farm Bureau from the case, which was the non-diverse party.

7. There is now complete diversity jurisdiction amongst the parties due to that dismissal.

8. By virtue of the Order of Dismissal as to each diversity destroying defendant, this Court now has diversity jurisdiction of the above-entitled action pursuant to 28 U.S.C. §1332, and the action may therefore be removed to this Court pursuant to 28 U.S.C. §1446(b)(3).

STATE COURT PROCEEDINGS

9. On October 17, 2019, Plaintiffs Sherry Wheeler and Mark Wheeler (hereinafter "Plaintiffs") filed their Complaint in the above-entitled action against Defendants Robert

Iovanne, USA Truck, Inc. and United Farm Family Mutual Insurance Company d/b/a Indiana Farm Bureau (hereinafter “INDIANA FARM BUREAU”) in the Allen County Superior Court in the State of Indiana, Cause No. 02D01-1910-CT-000555, and is now pending therein.

10. On October 21, 2019, Plaintiffs’ counsel filed Certificate of Issuance of Summons with respect to all Defendants.

11. On October 30, 2019, Plaintiffs’ counsel filed Service Returned Served as to all Defendants.

12. On November 15, 2019, Counsel Renea Hooper and Michael Langford of Scopelitis Garvin Light Hanson & Feary, P.C., filed their appearance on behalf of Defendants Robert Iovanne and USA Truck, Inc. along with Defendants’ Answer and Affirmative Defenses.

13. On November 15, 2019 the Allen County Superior Court issued an Order with regards to correspondence the Court received from Defendant Robert Iovanne.

14. On November 22, 2019, Counsel Eric M. Wilkins filed his appearance on behalf of Defendant Indiana Farm Bureau along with a Jury Demand, and Motion for Extension of Time to Answer.

15. On November 22, 2019, the Allen County Superior Court issued an Order Granting Defendant Indiana Farm Bureau’s Motion for Enlargement of Time to File Responsive Pleading, granting them a period of time through and including December 16, 2019 in which to answer or otherwise respond to Plaintiffs’ Complaint.

16. On December 19, 2019, Defendant Indiana Farm Bureau filed their Answer and Affirmative Defenses.

17. On January 21, 2020, Counsel David Singleton entered his appearance on behalf of Plaintiffs.

18. On January 21, 2020, Defendant Indiana Farm Bureau filed their Motion for Summary Judgment along with their Memorandum in Support and Designation of Evidence.

19. On January 21, 2020, the Allen County Superior Court issued a Case Management Order.

20. On February 6, 2020, the undersigned filed her appearance on behalf of Defendants Robert Iovanne and USA Truck, Inc. along with a Notice of Substitution of Counsel.

21. On February 6, 2020, the Allen County Superior Court issued an Order Granting the Notice of Substitution of Counsel in which the attorneys of record for Defendants Robert Iovanne and USA Truck, Inc.'s shall be listed as Lesley Pfleging and Katherine L. English of Lewis Wagner, LLP, in the place of Scopelitis Garvin Light Hanson & Feary, P.C.

22. On February 18, 2020, Defendant Robert Iovanne and USA Truck, Inc.'s filed their Notice of Non-Opposition to Indiana Farm Bureau's Motion for Summary Judgment.

23. On February 25, 2020, counsel Lynsey F. David filed her appearance on behalf of Robert Iovanne and USA Truck, Inc.

24. On February 26, 2020, counsel Katherine L. English filed her Motion to Withdraw Appearance.

25. On February 27, 2020, the Allen County Superior Court issued an Order Granting the Motion to Withdraw in which the appearance of Katherine L. English was withdrawn, and the undersigned will remain as counsel for Defendants Robert Iovanne and USA Truck, Inc.

26. On March 3, 2020 the parties filed a Stipulation to Dismiss Indiana Farm Bureau.

27. On March 3, 2020 the Allen County Superior Court issued an Order Granting the Dismissal of United Farm Family Mutual Insurance Company d/b/a Indiana Farm Bureau.

28. Defendants assert that there are no state court motions that remain pending at the time of this Notice of Removal.

DIVERSITY JURISDICTION EXISTS

29. This is a civil action that falls within the Court's original jurisdiction under 28 U.S.C. § 1332 and is one that may be removed to this Court based on diversity of citizenship under 28 U.S.C. §§ 1441 and 1446, and supplemental jurisdiction under 28 U.S.C. §1367.

30. Plaintiffs Sherry Wheeler and Mark Wheeler are residents of the State of Indiana.

31. Defendant Robert Iovanne is a citizen of the State of Georgia.

32. USA TRUCK, INC. is an Arkansas corporation with its principal place of business in Van Buren, Arkansas.

33. Because USA TRUCK, INC. is not incorporated in Indiana or have its principal place of business in Indiana, it is not a citizen of the State of Indiana for purposes of diversity jurisdiction.

34. There is complete diversity of citizenship between the parties named in this case.

35. Plaintiffs' Complaint for Damages does not demand a specific sum of monetary damages. The State of Indiana does not permit a demand for a specific sum or permit recovery of damages in excess of the amount demanded. Therefore, this Notice of Removal states that the monetary value of the amount in controversy exceeds \$75,000, exclusive of interest and costs, based upon the following:

a. Plaintiff contends she sustained injuries as an alleged result of the accident forming the basis of their Complaint.

b. Plaintiff alleges said injuries are severe and permanent, including a left leg hematoma, fractured ribs, back injury, head laceration, and head staples.

c. Plaintiffs' discovery responses indicate that her special damages are in excess of \$101,000.

36. Based upon the injuries alleged and damages claimed by Plaintiffs, she seeks recovery in excess of \$75,000 exclusive of interest and costs, the value to Plaintiffs of the relief sought in the Complaint exceeds \$75,000 exclusive of interest and costs, and/or the amount in controversy exceeds \$75,000 exclusive of interest and costs.

37. The amount in controversy requirement is satisfied based on the claim of Plaintiff Sherry Wheeler alone, and is *not* dependent on any aggregation of the value of both Plaintiffs' claims.

38. Plaintiff Mark Wheeler has asserted a claim for loss of consortium which may not, independently, meet the minimum amount in controversy requirement. However, "a federal court in diversity jurisdiction may exercise supplemental jurisdiction over additional plaintiffs whose claims do not satisfy the minimum amount-in-controversy requirement, provided the claims are part of the same case or controversy as the claims of plaintiffs who do allege a sufficient amount in controversy, if other jurisdictional prerequisites are met." *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 125 S. Ct 2611, 2621-22 (2005). Because Plaintiff Mark Wheeler's claim is part of the same case or controversy as the claim raised by Plaintiff Sherry Wheeler, this Court may exercise supplemental jurisdiction pursuant to 28 U.S.C. §1367.

39. Therefore, this state court action is properly removed to this Court in accordance with 28 U.S.C. §§ 1441 and 1446 because: (1) this action is a civil action pending within the jurisdiction of the United States District Court for the Northern District of Indiana, Fort Wayne

Division; (2) this action is between citizens of different States; (3) the amount in controversy exceeds \$75,000, exclusive of interest and costs related to Plaintiff, Sherry Wheeler's claim; and (4) supplemental jurisdiction over the claim of Plaintiff, Mark Wheeler is proper.

STATUTORY REQUIREMENTS

40. Pursuant to 28 U.S.C. § 1446(a), a copy of the entire state court file is attached as an Exhibit and includes the State Court Record as of the date of this Notice of Removal, including the following: Plaintiffs' Appearance, Complaint, Summons, Jury Demand, Certificate of Issuance of Summons, Service Returned Served, Order Setting Case Management Conference, Service Returned Served, Appearance for Defendants Robert Iovanne and USA Truck, Inc. Answer, Order Regarding Defendant Iovanne's Correspondence, Appearance for Indiana Farm Bureau, Jury Demand, Motion for Enlargement of Time, Order Granting Motion for Enlargement of Time, Indiana Farm Bureau's Answer, Appearance for Plaintiffs, Motion for Summary Judgment, Memorandum in Support, Designation of Evidence, Case Management Order issued, Appearance for Defendants Iovanne and USA Truck, Inc., Notice of Substitution of Counsel, Order Granting Notice of Substitution of Counsel, Defendants Iovanne and USA Truck, Inc.'s Notice of Non-Opposition to Indiana Farm Bureau's Motion for Summary Judgment, Appearance for Defendants Iovanne and USA Truck, Inc., Motion to Withdraw Appearance, Order Granting Motion to Withdraw Appearance, Stipulation to Dismiss United Farm Family Mutual Insurance Company d/b/a Indiana Farm Bureau, Without Prejudice, Order of Dismissal as to Defendant United Farm Family Insurance Company without Prejudice.

41. A copy of this Notice of Removal has been filed in the Allen County Superior Court and Plaintiffs have been served with both this Notice of Removal and the Notice of Filing Notice of Removal.

WHEREFORE, Defendants, ROBERT IOVANNE and USA TRUCK, INC., by counsel, respectfully request that the above-entitled action be removed from the Allen County Superior Court to the United States District Court for the Northern District of Indiana, Fort Wayne Division.

LEWIS WAGNER, LLP

By: /s/Lesley A. Pfleging
LESLEY A. PFLEGING, #26857-49A
LYNSEY F. DAVID, # 32594-49
***Counsel for Defendants Robert Iovanne and
USA Truck, Inc.***

CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2020, a copy of the foregoing Notice of Removal was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the court's electronic filing system. Parties may access this filing through the court's system.

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